

**Title 23: TRANSPORTATION**  
**Chapter 3: OFFICIALS AND THEIR DUTIES**

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**Maine Revised Statutes**  
**Title 23: TRANSPORTATION**  
**Chapter 3: OFFICIALS AND THEIR DUTIES**

**Subchapter 1: DEPARTMENT OF TRANSPORTATION**

**§51. APPOINTMENT; TENURE; REPORTS**  
**(REPEALED)**

SECTION HISTORY

1967, c. 490, §8 (AMD). 1969, c. 504, §§37,38 (AMD). 1971, c. 593, §4 (RP).

**§52. GENERAL POWERS AND DUTIES**

The Department of Transportation, referred to in this chapter as "the department," may from time to time make and shall enforce rules and regulations relating to the planning, design, engineering, construction, improvement, maintenance and use of transportation infrastructure. The department may from time to time make and shall enforce rules relating to the manner of conducting all investigations and hearings and the administration of its office, powers and duties. The department shall direct the expenditure of all money for the planning, design, engineering, construction, improvement, demolition, maintenance and use of all transportation infrastructure for which state funds are provided by law. The department may conduct traffic survey interviews and other statistical studies on the state highway system as considered necessary for the use in planning and development of the statewide highway system. The department may obtain leases for such land and office space as the department considers necessary for the performance of its duties. As used in this section, "transportation infrastructure" means infrastructure related to all modes of transportation, including highways, bridges, railroads, ferries, mass transit, airports and bicycle and pedestrian facilities, as well as all buildings, utilities, facilities and other appurtenances related to such modes. [2007, c. 306, §1 (AMD) . ]

The department has full power to purchase all supplies, materials and equipment that are incidental to, or necessary for, project-specific construction, improvement or maintenance of transportation infrastructure. The purchase of supplies, materials and equipment for nonproject-specific purposes must be made through the State Purchasing Agent as provided by law. For the purposes of this section, unless the context otherwise indicates, "project-specific" means relating to a specific location for a limited duration, as opposed to perennial, nonlocation-specific activities. The department may be consulted by and shall, without charge, advise municipal officers and road commissioners on the subject of construction, improvement and maintenance of public highways, bridges and other structures. The department shall whenever practicable give preference in employment to the inhabitants of the town in which such highways are located. [2005, c. 313, §2 (RPR) . ]

The department may adopt its own guidelines for determining the reasonableness and permissibility of various cost factors, including, but not limited to, salary limits, benefits and expense reimbursement. Notwithstanding any other federal or state law to the contrary, the department's guidelines must be used in lieu of federally mandated provisions. [2005, c. 313, §2 (RPR) . ]

SECTION HISTORY

1971, c. 593, §22 (AMD). 1973, c. 625, §128 (AMD). 1997, c. 52, §1 (AMD). 2005, c. 313, §2 (RPR). 2007, c. 306, §1 (AMD).

## §52-A. RETENTION OF PART OF CONTRACT PRICE AND SETTLEMENT OF CLAIMS BY SUBCONTRACTORS

(REPEALED)

### SECTION HISTORY

1979, c. 580, (NEW). 1989, c. 165, §3 (AMD). 2013, c. 36, §3 (RP).

## §53. CLASSIFICATION OF HIGHWAYS

**1. Classification.** The department shall cause charts and maps to be made showing the location and mileage of all highways in the State, and shall classify the highways of the State, and may, from time to time, amend that classification, namely: First, state highways, which mean a system of connected main highways throughout the State which primarily serve arterial or through traffic; 2nd, state aid highways, which mean those highways not included in the system of state highways which primarily serve as collector and feeder routes connecting local service roads to the arterial state highway system; and 3rd, town ways, which mean all other highways not included in the first 2 classes, which are maintained by the towns and primarily serve as local service roads providing access to adjacent land. The criteria to be used in the classification of highways shall be considered rulemaking and subject to Title 5, chapter 375, subchapter II.

[ 1981, c. 702, Pt. Z, §1 (NEW) .]

**2. Maintenance, repair and upkeep.** The maintenance, repair and upkeep of any and all state and state aid highways that are reclassified as towns ways pursuant to subsection 1 shall be the responsibility of the respective towns in which those ways lie and any and all rights of the State in those highways are transferred to the respective towns for those purposes.

[ 1981, c. 702, Pt. Z, §1 (NEW) .]

### SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C2 (AMD). 1981, c. 702, §Z1 (RPR).

## §53-A. SEASONAL PARKWAYS

**1. Classification.** The department may lay out, establish, acquire, open, construct, improve, maintain, discontinue and regulate as a state highway seasonal access road roads to public recreational areas which shall be classified "seasonal parkways."

[ 1971, c. 593, §22 (AMD) .]

**2. Limitations.** Such public highway shall be subject to the following conditions or limitations.

A. It shall be designed, constructed and maintained for seasonal use only, except as otherwise provided in this section. [1971, c. 556, (NEW) .]

B. It shall be primarily for noncommercial vehicle and light-load commercial vehicle use. [1971, c. 556, (NEW) .]

C. Access may be allowed only at public highway intersections designated by the department or at private road intersections approved by the department. [1971, c. 593, §22 (AMD) .]

D. Construction standards shall be commensurate with public seasonal use and need as shall be determined by the department. [1971, c. 593, §22 (AMD) .]

E. The department shall have full power and authority to regulate the use of seasonal parkways which shall include, but not be limited to, utility installations, speed and load weight, and snowmobiling. [1971, c. 593, §22 (AMD).]

F. The department may develop the natural scenic beauty along and adjacent to seasonal parkways. [1971, c. 593, §22 (AMD).]

G. The department shall close seasonal parkways to motor vehicular use for such seasonal periods deemed consistent with the public use and deemed expedient for the reduction of maintenance costs and undue abuse or deterioration to the highway caused by use during periods when adverse climatic conditions prevail. The road, or portions thereof, shall be officially closed when the department erects appropriate barricades across the way with a conspicuous notice posted thereon which shall set forth the time period the road shall remain closed. [1971, c. 593, §22 (AMD).]

H. The construction, reconstruction, improvement and maintenance of seasonal parkways and bridges thereon shall be borne wholly by the State under allocations for state highways and the department may contract for construction, reconstruction, improvement or maintenance as with state highways. [1971, c. 593, §22 (AMD).]

I. The department may make and enforce rules and regulations relating to construction and maintenance of seasonal parkways. [1971, c. 593, §22 (AMD).]

J. The department shall not designate, lay out or construct and maintain any seasonal parkway until and unless an adequate right-of-way be conveyed to the State without cost and a waiver filed for any and all damages which may result to the remaining land from the construction and further, such conveyance shall include such rights of access as the department requires. [1971, c. 593, §22 (AMD).]

[ 1971, c. 593, §22 (AMD) .]

#### SECTION HISTORY

1971, c. 556, (NEW). 1971, c. 593, §22 (AMD).

### §54. HIGHWAY OPENINGS

Wherever highways maintained by the State are affected, whether the highways are situated in cities, towns or plantations, the department has all and the same rights, powers and duties in connection therewith as are granted to cities in city streets by sections 3351 to 3359, and to cities and towns by Title 35-A, sections 2306 and 2310. Whenever the opening fee provided by section 3354 or by Title 35-A, section 2510, has been paid to the department and a permit for digging up and opening a highway maintained by the State has been issued by the department, the holder of the permit is entitled to make the opening described therein without the payment of fees to the city or town or village corporation in which the street, road or highway to be opened is situated. [1997, c. 393, Pt. A, §24 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1987, c. 141, §B16 (AMD). 1997, c. 393, §A24 (AMD).

### §55. ASSISTANCE IN COLLECTION OF GAS TAX

*(REPEALED)*

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 456, §A71 (RP).

## **§56. OFFICERS TO ENFORCE ORDERS REGARDING RESTRICTED TRAVEL; SHERIFFS**

The department may appoint any person in its employ whose special duty it shall be to enforce the statutes and orders promulgated thereunder which prohibit or restrict the passage of vehicles and trailers over ways and bridges, or designated sections thereof, under such conditions or in such manner as may cause undue damage to any such way or bridge. Every such person shall be appointed in writing by the department to serve during its pleasure and shall have the same power as sheriffs and their deputies to arrest and prosecute all persons caught violating said statutes and orders within the territorial limits designated in his appointment. He shall be entitled to the same fees as sheriffs and their deputies for like services. [1971, c. 593, §22 (AMD).]

### **SECTION HISTORY**

1971, c. 593, §22 (AMD).

## **§57. COOPERATION AND ACCEPTANCE OF FEDERAL FUNDS**

"Title 23, United States Code," and all other Acts amendatory thereof and supplementary thereto, are assented to. The Department of Transportation is authorized and empowered to accept, for the State, federal funds apportioned under said code as amended and supplemented, to act for the State, in conjunction with the representatives of the Federal Government, in all matters relating to the location and construction of highways to be built with federal aid pursuant to said code, and to make all contracts and do all things necessary to cooperate with the United States Government in the construction and maintenance of public highways in accordance with said code, as amended and supplemented. [1971, c. 593, §22 (AMD).]

### **SECTION HISTORY**

1971, c. 593, §22 (AMD).

### **§57-A. ACCEPTANCE OF FUNDS**

The Department of Transportation is authorized and empowered to accept for the State funds from one or more private parties for transportation improvement needs generated by development. Such funds must be segregated and held in an account to be used as agreed by the parties. The State and its employees are not liable to any person, corporation or entity for damages arising out of any activities or contracts or for any other service or financial commitment resulting from the implementation of this section. [1991, c. 409, §1 (NEW).]

### **SECTION HISTORY**

1991, c. 409, §1 (NEW).

## **§58. SUPPLIES FROM FEDERAL GOVERNMENT**

The department is authorized and empowered to obtain from the Federal Government or any agency thereof, through purchase or gift, supplies, materials and equipment which is adaptable to highway maintenance and construction. Such supplies, materials and equipment may be sold, leased or given by the department to the several towns in the State which make a written request therefor, on such terms and conditions as the department, in its discretion, deems necessary. [1971, c. 593, §22 (AMD).]

### **SECTION HISTORY**

1971, c. 593, §22 (AMD).



## §59. -- UNIFORM NUMBERING SYSTEM

The department is authorized to cooperate with the Federal Government in formulating and adopting a uniform system of numbering or designating roads of interstate character within this State, and in the selection and erection of uniform danger signals and safety devices for the protection and direction of traffic on said highways. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD).

## §60. TOWN COOPERATION

Towns are authorized to enter into agreements with the Department of Transportation for the expenditure of town funds for maintenance and repair of town roads. The department is authorized, when requested by towns, to accept town funds for expenditure under its direction. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD).

## §61. VACATION, SALE OR LEASE OF ACQUIRED LAND

**1. Land acquired may be vacated.** The Department of Transportation may vacate any land or part of land or rights in land which have been taken or acquired for transportation purposes by executing and recording a deed, and that action shall vest the title to the lands or rights so vacated in the person in whom it was vested at the time of the taking, their heirs and assigns. The value at the time of vacation may be pleaded in mitigation of damages in any proceeding on account of that taking.

[ 1985, c. 13, (NEW) .]

**2. Land acquired may be sold.** The Governor, on recommendation of the department, may sell and convey on behalf of the State the interests of the State in property taken or acquired by purchase for transportation purposes and deemed no longer necessary for those purposes.

[ 1985, c. 13, (NEW) .]

**2-A. Easements may be conveyed.** The Department of Transportation may grant or otherwise transfer easements over property taken or acquired for transportation purposes when the department in its sole discretion determines that the conveyance of such easements is appropriate and necessary.

[ 1999, c. 753, §1 (NEW) .]

**3. Lease and use of property.** The department may make advantageous use of property acquired or taken pending that use for transportation purposes, including, but not limited to, the leasing of those interests. All such property and interests shall be deemed to be for transportation purposes and shall be exempt from taxation.

[ 1985, c. 13, (NEW) .]

**4. Proceeds from sale, lease or vacating.** The State's share of all gross proceeds from a sale, lease or vacating of property shall be deposited into the Highway Fund and shall only be expended upon allocation by the Legislature. The Federal Government's share shall be deposited in the account from which it originated.

[ 1987, c. 735, §39 (RPR) .]

### SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 194, (AMD). 1975, c. 771, §234A (AMD). 1985, c. 13, (RPR). 1987, c. 735, §39 (AMD). 1999, c. 753, §1 (AMD).

## §62. RECORD OF LOCATIONS AND CHANGES

Whenever the department shall establish and locate or change the location of a state highway or state aid highway, or any town shall establish and locate or change the location of a highway that was designated as a 3rd class highway at the time that the 3rd class highway designations were rescinded, in any county of this State where the establishing and locating change the present location of any road, the said department or the town shall cause to be filed with the county commissioners of the county in which any such road is located an accurate description or plan of its metes and bounds and courses and distances. [1975, c. 21, (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 21, (AMD).

## §63. CONFIDENTIALITY OF RECORDS HELD BY THE DEPARTMENT AND THE MAINE TURNPIKE AUTHORITY

**1. Confidential records.** The following records in the possession of the department and the Maine Turnpike Authority are confidential and may not be disclosed, except as provided in this section:

A. Records and correspondence relating to negotiations for and appraisals of property; and [2011, c. 524, §5 (NEW).]

B. Records and data relating to engineering estimates of costs on projects to be put out to bid. [2011, c. 524, §5 (NEW).]

[2011, c. 524, §5 (NEW).]

**2. Engineering estimates.** Engineering estimates of total project costs are public records after the execution of project contracts.

[2011, c. 524, §5 (NEW).]

**3. Records relating to negotiations and appraisals.** The records and correspondence relating to negotiations for and appraisals of property are public records beginning 9 months after the completion date of the project according to the record of the department or Maine Turnpike Authority, except that records of claims that have been appealed to the Superior Court are public records following the award of the court.

[2011, c. 524, §5 (NEW).]

### SECTION HISTORY

1971, c. 593, §22 (AMD). 2001, c. 158, §1 (RPR). 2011, c. 524, §5 (RPR).

## §64. ENFORCEMENT OF PROVISIONS

The department shall cause complaint to be entered against any offender of section 3252, when the way obstructed or affected by the obstruction is maintained by the State. The forfeitures recovered in such cases shall be paid to the Treasurer of State for the use of the State Highway Maintenance Fund. [1981, c. 470, Pt. A, §121 (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 470, §A121 (AMD).

## **§65. DISPLACED PERSONS RELOCATION ASSISTANCE** ***(REPEALED)***

### SECTION HISTORY

1965, c. 433, §1 (NEW). 1969, c. 207, §2 (RP).

## **§66. ASSISTANCE PROVIDED** ***(REPEALED)***

### SECTION HISTORY

1965, c. 433, §1 (NEW). 1969, c. 207, §2 (RP).

## **§67. MOVING EXPENSES** ***(REPEALED)***

### SECTION HISTORY

1965, c. 433, §1 (NEW). 1969, c. 207, §2 (RP).

## **§68. LIMITS** ***(REPEALED)***

### SECTION HISTORY

1965, c. 433, §1 (NEW). 1969, c. 207, §2 (RP).

## **§69. DETERMINATION BY LAND DAMAGE BOARD** ***(REPEALED)***

### SECTION HISTORY

1965, c. 433, §1 (NEW). 1969, c. 207, §2 (RP).

## **§70. RULES AND REGULATIONS** ***(REPEALED)***

### SECTION HISTORY

1965, c. 433, §1 (NEW). 1969, c. 207, §2 (RP).

## **§71. FEDERAL AID SAFER ROADS DEMONSTRATION PROGRAM** ***(REPEALED)***

### SECTION HISTORY

1973, c. 671, (NEW). 1981, c. 492, §C3 (RP).

## §72. ACCEPTANCE OF METROPOLITAN PLANNING FUNDS

The Policy Committees as established to carry out comprehensive transportation planning activities in urbanized areas are authorized to receive and administer Federal and State Transportation Planning Funds for such planning activities. Said Policy Committees may contract with various state, local and regional agencies to carry out the provisions of Section 134, Title 23, United States Code. [1973, c. 671, (NEW).]

### SECTION HISTORY

1973, c. 671, (NEW).

## §73. TRANSPORTATION POLICY

**1. Short title.** This section may be known and cited as the "Sensible Transportation Policy Act."

[ 1991, c. 1, §1 (NEW) .]

**2. Purposes and findings.** The people of the State find that decisions regarding the State's transportation network are vital to the well-being of Maine citizens, to the economic health of the State and to the quality of life that the citizens treasure and seek to protect.

The people also find that these decisions have profound, long-lasting and sometimes detrimental impacts on the natural resources of the State, including its air quality, land and water.

The people further find that substantial portions of the state highway system are in disrepair and improvements to the State's roads and bridges are necessary to provide a safe, efficient, and adequate transportation network throughout the State.

The people further find that the State's transportation network is heavily dependent on foreign oil, that such reliance is detrimental to the health of the State's economy and that the health and long-term stability of the State's economy require increased reliance on more efficient forms of transportation.

The people further find that improvements to the transportation network are necessary to meet the diverse transportation needs of the people of the State including rural and urban populations and the unique mobility requirements of the elderly and disabled.

The people further find that the decisions of state agencies regarding transportation needs and facilities are often made in isolation, without sufficient comprehensive planning and opportunity for meaningful public input and guidance.

[ 1991, c. 1, §1 (NEW) .]

**3. Transportation policy.** It is the policy of the State that transportation planning decisions, capital investment decisions and project decisions must:

A. Minimize the harmful effects of transportation on public health and on air and water quality, land use and other natural resources; [1991, c. 2, §88 (COR).]

B. Require that the full range of reasonable transportation alternatives be evaluated for all significant highway construction or reconstruction projects and give preference to transportation system management options, demand management strategies, improvements to the existing system, and other transportation modes before increasing highway capacity through road building activities; [1991, c. 2, §88 (COR).]

C. Ensure the repair and necessary improvement of roads and bridges throughout the State to provide a safe, efficient and adequate transportation network; [1991, c. 2, §88 (COR).]

D. Reduce the State's reliance on foreign oil and promote reliance on energy-efficient forms of transportation; [1991, c. 2, §88 (COR).]

E. Meet the diverse transportation needs of the people of the State, including rural and urban populations and the unique mobility needs of the elderly and disabled; [1991, c. 2, §88 (COR).]

F. Be consistent with the purposes, goals and policies of the Comprehensive Planning and Land Use Regulation Act; and [1991, c. 2, §88 (COR).]

G. Incorporate a public participation process in which local governmental bodies and the public have timely notice and opportunity to identify and comment on concerns related to transportation planning decisions, capital investment decisions and project decisions. The department and the Maine Turnpike Authority shall take the comments and concerns of local citizens into account and must be responsive to them. [1991, c. 2, §88 (COR).]

[ 1991, c. 2, §88 (COR) .]

**4. Rulemaking.** The Department of Transportation shall adopt a rule within one year of the effective date of this Act, in coordination with the Maine Turnpike Authority and state agencies including the Department of Economic and Community Development, the Department of Agriculture, Conservation and Forestry and the Department of Environmental Protection, to implement the statewide comprehensive transportation policy. The rule must incorporate a public participation process that provides municipalities and other political subdivisions of the State and members of the public notice and opportunity to comment on transportation planning decisions, capital investment decisions, project decisions and compliance with the statewide transportation policy.

The Department of Transportation shall adopt a rule, in coordination with the Department of Agriculture, Conservation and Forestry, that establishes linkage between the planning processes outlined in this section and those promoted by Title 30-A, chapter 187, subchapter 2 and that promotes investment incentives for communities that adopt and implement land use plans that minimize over-reliance on the state highway network. This rule is a major substantive rule as defined in Title 5, chapter 375, subchapter 2-A.

[ 2011, c. 655, Pt. JJ, §9 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

**5. Applicability to Department of Transportation.** Transportation planning decisions, capital investment decisions and project decisions of the Department of Transportation are governed by and must comply with the transportation policy set forth in this section and rules implementing that policy.

[ 1991, c. 1, §1 (NEW) .]

#### **6. Capital goals and reporting.**

[ 2011, c. 610, Pt. B, §1 (RP) .]

**7. Priorities, service levels, capital goals and reporting.** The Department of Transportation shall classify the State's public highways as Priority 1 to Priority 6 corridors using factors such as the federal functional classification system, regional economic significance, heavy haul truck use and relative regional traffic volumes. The department shall also establish customer service levels related to safety, condition and serviceability appropriate to the priority of the highway, resulting in a system that grades each highway as Excellent, Good, Fair, Poor or Unacceptable.

To provide a capital transportation program that is geographically balanced and that addresses urban and rural needs, the department shall include the following goals as part of its capital improvement plans and program delivery. The goals are to:

A. By 2022, improve all Priority 1 and Priority 2 corridors so that their safety, condition and serviceability customer service level equals Fair or better; [2011, c. 610, Pt. B, §2 (NEW) .]

B. By 2027, improve all Priority 3 corridors so that their safety, condition and serviceability customer service level equals Fair or better; [2011, c. 610, Pt. B, §2 (NEW).]

C. By 2017, implement a pavement program for all Priority 4 corridors that maintains their ride quality customer service level at Fair or better; [2011, c. 610, Pt. B, §2 (NEW).]

D. Continue the light capital paving program on a 7-year cycle for Priority 5 corridors outside compact areas as defined in section 754; and [2011, c. 610, Pt. B, §2 (NEW).]

E. By 2015, develop and implement a similar asset priority and customer service level system of measurement for all major freight and passenger transportation assets owned or supported by the department, including capital goals. [2011, c. 610, Pt. B, §2 (NEW).]

The department shall report to the joint standing committee of the Legislature having jurisdiction over transportation matters by March 1st of each odd-numbered year quantifying progress realized and time that has elapsed since the goals were established. The department shall recommend any remedial actions, including additional funding or revisions to the goals, that the department determines to be necessary or appropriate.

[ 2011, c. 610, Pt. B, §2 (NEW) .]

#### SECTION HISTORY

IB 1991, c. 1, §1 (NEW). RR 1991, c. 2, §88 (COR). 2003, c. 22, §1 (AMD). 2007, c. 470, Pt. B, §1 (AMD). 2011, c. 610, Pt. B, §§1, 2 (AMD). 2011, c. 655, Pt. JJ, §9 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §5 (REV).

### §73-A. TRANSPORTATION PLANNING INCENTIVE FUNDING

*(REPEALED)*

#### SECTION HISTORY

2007, c. 208, §1 (NEW). 2013, c. 36, §4 (RP).

### §74. FREIGHT TRANSPORTATION ADVISORY COUNCIL

**1. Purpose; membership.** The Commissioner of Transportation shall establish a freight transportation advisory council to facilitate discussion and provide insight into issues pertaining to freight transportation in the State. The commissioner shall invite no fewer than 9 people from the private sector to participate as members of the council. Membership must include representatives of various geographic areas of the State. Membership must include at least one person with experience in each of the following:

A. Commercial trucking; [2003, c. 498, §2 (NEW).]

B. Rail freight; [2003, c. 498, §2 (NEW).]

C. Waterborne freight; [2003, c. 498, §2 (NEW).]

D. Forest products; [2013, c. 36, §5 (AMD).]

E. [2013, c. 36, §5 (RP).]

F. Agricultural products; [2013, c. 36, §5 (AMD).]

G. Petroleum products; and [2013, c. 36, §5 (AMD).]

H. General manufacturing. [2013, c. 36, §5 (NEW).]

[ 2013, c. 36, §5 (AMD) .]

**2. Meetings; chair.** The Commissioner of Transportation or the commissioner's designee shall serve as chair of the council established in subsection 1. The Department of Transportation shall provide staff support to the council. The council shall meet at the call of the chair but not less than 4 times during a calendar year. Members of the council serve without compensation.

[ 2003, c. 498, §2 (NEW) .]

SECTION HISTORY

2003, c. 498, §2 (NEW). 2013, c. 36, §5 (AMD).

## Subchapter 2: HIGHWAY SAFETY COMMITTEE

### **§101. ESTABLISHMENT; DESIGNATION**

*(REPEALED)*

SECTION HISTORY

1971, c. 593, §5 (RP).

### **§102. OFFICERS AND EXECUTIVE BOARD**

*(REPEALED)*

SECTION HISTORY

1971, c. 593, §5 (RP).

### **§103. POWERS AND DUTIES OF EXECUTIVE BOARD**

*(REPEALED)*

SECTION HISTORY

1971, c. 593, §5 (RP).

### **§104. ADVISORY COMMITTEE; MEETINGS**

*(REPEALED)*

SECTION HISTORY

1967, c. 2, §1 (AMD). 1971, c. 593, §5 (RP).

### **§105. EXECUTIVE DIRECTOR**

*(REPEALED)*

SECTION HISTORY

1967, c. 2, §2 (AMD). 1971, c. 593, §5 (RP).

## Subchapter 3: STATE CLAIMS COMMISSION HEADING: PL 1987, C. 395, PT. A, §91 (RPR)

### **§151. PURPOSES**

The purposes of this subchapter are to establish an independent, impartial board composed of persons well learned in the elements that may be properly considered in the determination of fair market value of property taken in condemnation proceedings; to empower such board to make awards of just compensation in highway condemnations and to establish before such board a procedure designed to afford to any interested party an opportunity to appear, present his case and have his rights fully protected without the necessity for

retaining professional assistance; to thus provide to any interested party a prompt, efficient and inexpensive method of determination of just compensation and prompt payment of all or part of such compensation without prejudice to any right of appeal allowed. [1975, c. 771, §235 (AMD).]

#### SECTION HISTORY

1975, c. 771, §235 (AMD).

## §152. COMPOSITION; APPOINTMENT; POWERS

The State Claims Commission, established by Title 5, section 12004-B, subsection 5, consists of 5 members. Four of the members must be appointed by the Governor, 2 of whom must be qualified appraisers certified as general real estate appraisers pursuant to Title 32, chapter 124 and 2 of whom must be attorneys-at-law. The Governor shall designate one of the attorneys-at-law to be chair. The members of the commission appointed by the Governor shall serve for terms of 4 years. They must be sworn, and for inefficiency, willful neglect of duty or for malfeasance in office may, after notice and hearing, be removed by the Governor on the address of both branches of the Legislature or by impeachment. In case of a vacancy occurring through death, resignation or removal, the Governor shall appoint a successor for the whole term of the member whose place that successor takes, subject to removal as provided in this section. [1999, c. 185, §2 (AMD).]

Members of the State Claims Commission must be compensated according to the provisions of Title 5, chapter 379. The daily rate for commission members is \$150. [1995, c. 438, §2 (AMD).]

In carrying out its duties, the commission shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. It shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant and unduly repetitious testimony. A majority of the commission, being present, may determine all matters, but the chairman shall resolve all questions of admissibility. [1987, c. 395, Pt. A, §92 (RPR).]

The commission shall have authority to make rules and prescribe forms to secure a speedy, efficient and inexpensive disposition of all proceedings. Each member of the commission, for its official purposes, may administer oaths, certify to official acts and issue all process necessary to the performance of the duties of the commission. A reporter shall record hearings when required by the commission. [1987, c. 395, Pt. A, §92 (RPR).]

The commission must maintain an office in Kennebec County. The Commissioner of Administrative and Financial Services shall appoint, subject to the Civil Service Law, a clerk of the commission to keep its records and to perform such other duties as the commission prescribes. The clerk has authority to certify to all official acts of the commission, administer oaths, issue subpoenas, and issue all processes, notices, orders or other documents necessary to the performance of the duties of the commission. [1991, c. 780, Pt. Y, §119 (AMD).]

The Commissioner of Administrative and Financial Services shall appoint and fix the compensation of a reporter to the commission, and shall review and approve all charges made by such reporter for transcripts of the record of hearings before the commission. The commissioner may appoint, subject to the Civil Service Law, such clerical assistants for the commissioner as the commissioner considers necessary. [1991, c. 780, Pt. Y, §120 (AMD).]

The 5th member of the commission shall be appointed for each hearing or series of hearings within the county where the land taken lies. He shall be a member of the board of county commissioners of the county wherein the land taken is situated and shall be appointed by the chairman of the State Claims Commission upon recommendation which shall be made, upon request, by the board of county commissioners of that particular county. In the event that any board of county commissioners should fail to make the required recommendation, then the chairman of the State Claims Commission may appoint a member of such board to serve. He shall be sworn by the chairman of the State Claims Commission and shall serve as a member of that commission only for the particular hearing or hearings for which he is appointed. He shall participate fully in such hearings and the awards made as a result thereof. Each such member shall be paid at the same per diem rate as that fixed for other members of the commission. Any member of the board of county commissioners



thus designated shall serve only for the particular hearing or hearings set forth in his appointment and such service shall be as a member of the State Claims Commission and not in his capacity as a member of the board of county commissioners. [1987, c. 395, Pt. A, §92 (RPR).]

#### SECTION HISTORY

1965, c. 473, §1 (AMD). 1967, c. 494, §18 (AMD). 1971, c. 189, §1 (AMD). 1973, c. 585, §5 (AMD). 1973, c. 686, §1 (AMD). 1975, c. 771, §§236,236-A (AMD). 1979, c. 487, §1 (AMD). 1983, c. 94, §§A-24 (AMD). 1983, c. 553, §§23,24 (AMD). 1983, c. 812, §§138,139 (AMD). 1985, c. 785, §§A96,A97, B101, (AMD). 1987, c. 395, §A92 (RPR). 1987, c. 402, §§A145,146 (AMD). 1987, c. 769, §§A81,A82 (AMD). 1989, c. 503, §B98 (AMD). 1991, c. 684, §1 (AMD). 1991, c. 780, §§Y119,120 (AMD). 1995, c. 438, §2 (AMD). 1999, c. 185, §2 (AMD).

## §153. PROPERTY FOR HIGHWAYS

*(REPEALED)*

#### SECTION HISTORY

1965, c. 295, §1 (AMD). 1965, c. 492, §1 (RPR). 1971, c. 593, §§20,22 (AMD). 1981, c. 470, §§A122,A123 (AMD). 1987, c. 267, §§1-4 (AMD). 1987, c. 395, §A93 (AMD). 1987, c. 735, §40 (AMD). 1987, c. 737, §§C67,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 208, §1 (AMD). 1991, c. 462, (AMD). 1993, c. 536, §1 (RP).

## §153-A. HOUSING FOR DISPLACED PERSONS

**1. Purchase.** Where a proposed highway project cannot proceed to actual construction because replacement housing is not available to displaced persons and cannot otherwise be made available, the department on behalf of the State of Maine may acquire by purchase such real property as may be necessary to construct new housing thereon, rehabilitate existing housing thereon or move existing housing thereon.

[ 1971, c. 593, §22 (AMD) .]

**2. Acquisition interpreted.** Acquisition of necessary replacement housing sites, rehabilitation, relocation or construction of replacement housing shall be an expense incidental to construction or reconstruction of a highway and shall not be deemed to be highway right-of-way and need not be within the limits of a construction project.

[ 1971, c. 333, §2 (NEW) .]

**3. Construction.** The department may construct, relocate or rehabilitate on any housing sites acquired under subsection 1 such housing as may be necessary for any person displaced by any highway construction or reconstruction undertaken by the department.

[ 1971, c. 593, §22 (AMD) .]

**4. Sale.** The department on behalf of the State of Maine may sell and convey the interest of the State acquired as replacement sites with the improvements thereon and may lease such interests in such property pending sale. Proceeds shall be credited to the project funds from which the purchase, rehabilitation or construction expenditures were made.

[ 1971, c. 593, §22 (AMD) .]

#### SECTION HISTORY

1971, c. 333, §2 (NEW). 1971, c. 593, §22 (AMD).

## §153-B. PROPERTY FOR HIGHWAYS; ACQUISITION

**1. Acquisition of property.** The Department of Transportation, on behalf of the State, may take over and hold for the State such property as it determines necessary to:

- A. Lay out and establish, construct, improve or maintain, provide a change of location or alignment of or provide drainage for state and state aid highways; [1993, c. 536, §2 (NEW) .]
- B. Provide rest areas, parking strips, roadside and landscape development for the preservation and development of natural scenic beauty; [1993, c. 536, §2 (NEW) .]
- C. Provide for the health, safety and welfare of the public using a state or state aid highway; [1993, c. 536, §2 (NEW) .]
- D. Secure materials, with necessary ways and access, for the construction, improvement and maintenance of state and state aid highways; [1993, c. 536, §2 (NEW) .]
- E. Secure the relocation, removal or disposal of automobile graveyards and junkyards not in conformity with Title 30-A, chapter 183, subchapter I; [1993, c. 536, §2 (NEW) .]
- F. Erect administrative, storage and operational buildings used in effecting the objectives in conformity with section 1; or [1993, c. 536, §2 (NEW) .]
- G. Construct, improve and maintain transportation projects as directed by law and provide mitigation for existing or potential environmental effects of transportation projects. [1993, c. 536, §2 (NEW) .]

[ 1993, c. 536, §2 (NEW) .]

**2. Survey and appraisal.** When property is to be purchased or taken over and held for the State, unless the department determines that an adequate description already exists, the department shall first cause the property or interest in the property to be acquired to be surveyed and described, and a plan of the property made, and to be appraised by one or more appraisers. The owner or the owner's designated representative must be given an opportunity to accompany the appraisers during the appraiser's inspection of the property. All persons employed by the department are authorized, to the extent necessary for surveys, appraisals and preliminary engineering, to enter and cross all lands within, adjoining and adjacent to the area proposed for acquisition in carrying out the objectives of this section. The department may prescribe procedures to waive the appraisal in cases involving the acquisition by sale or donation of property or interest in property. The department may prescribe procedures to waive the appraisal in cases in which the fair market value of the property or interest in the property to be taken is estimated at \$15,000 or less and valuation can be established by another method. In any case in which the department and the owner do not reach an agreement about the value of property or interest in property to be acquired, or if the owner requests, the department shall perform an appraisal.

[ 2001, c. 485, §1 (AMD) .]

**3. Entry; soundings, drillings and examinations.** Persons employed by the department may enter upon the property or building with the consent of the owner, for the purpose of making soundings, drillings and examinations as the department determines necessary for the purpose of this subchapter. If the department is unable to obtain consent of the owner, the department is authorized to seek an administrative inspection warrant from the Superior Court for the county in which the property is located for the purpose of making soundings, drillings and examinations. The department shall file an application in Superior Court in the form of a sworn affidavit that must include:

A. The statutory authority under which the department is authorized to acquire lands by eminent domain; [1993, c. 536, §2 (NEW).]

B. A description of the property to be examined; [1993, c. 536, §2 (NEW).]

C. A statement that the department has requested permission from the owner of the property to conduct an examination and that permission has been denied; and [1993, c. 536, §2 (NEW).]

D. A statement of the purpose for the entry and examination and the nature and scope of the activities reasonably necessary to accomplish this purpose. [1993, c. 536, §2 (NEW).]

[ 1993, c. 536, §2 (NEW) .]

**4. Notification to potential buyer.** If an owner decides to sell the property after the owner has been notified by the department that it plans to purchase or take the property, it is the responsibility of the owner to inform the potential buyer that the department intends to purchase or take the property. The department, as early in its property owner notification process as possible, shall remind the property owner of this responsibility.

[ 1993, c. 536, §2 (NEW) .]

#### SECTION HISTORY

1993, c. 536, §2 (NEW). 1997, c. 272, §1 (AMD). 2001, c. 485, §1 (AMD).

### **§153-C. ACQUISITION OF PROPERTY IDENTIFIED IN TRANSPORTATION PLANNING; NEW BYPASS HIGHWAY PROJECT**

**1. Acquisition of property.** If the Department of Transportation prepares an environmental impact statement as required by the federal National Environmental Protection Act of 1969 for permitting for the location of a new bypass highway project and property will be affected by the limits of the final bypass right-of-way and the property owner submits a request in writing to the department that the department acquire that portion of the owner's property determined necessary for the new bypass highway project, the department shall acquire the property determined necessary if:

A. The department has received a least environmentally damaging practicable alternative determination from the United States Army Corps of Engineers that will be incorporated into the environmental impact statement for corridor alignment indicating that certain property will be necessary for the purposes set forth in section 153-B, subsection 1; and [2009, c. 454, §1 (NEW).]

B. The fair market value is determined in accordance with this subchapter. [2009, c. 454, §1 (NEW) .]

The request submitted by the property owner under this subsection must be submitted to the department within 9 months of the date that the department receives the least environmentally damaging practicable alternative determination from the United States Army Corps of Engineers under paragraph A.

[ 2009, c. 454, §1 (NEW) .]

**2. Deadline for acquisition; extension.** The following provisions govern the deadline for acquisition of property by the Department of Transportation pursuant to subsection 1.

A. The department shall acquire affected properties pursuant to this subchapter within 2 years from the date of issuance of the least environmentally damaging practicable alternative determination from the United States Army Corps of Engineers under subsection 1, paragraph A. [2009, c. 454, §1 (NEW).]

B. Notwithstanding paragraph A, if funding for the new bypass highway project is not available or if state or federal regulations preclude the department from acquiring real property, the department may extend the time period for acquisition of affected properties up to 2 years. Any extension under this paragraph must be submitted no later than 90 days before the expiration of the 2 years under paragraph A to the joint standing committee of the Legislature having jurisdiction over transportation matters for its review and comment. [2009, c. 454, §1 (NEW).]

[2009, c. 454, §1 (NEW).]

**3. Reservation of eminent domain powers.** Nothing in this section affects or alters the rights of the Department of Transportation to exercise its rights of eminent domain under this Title.

[2009, c. 454, §1 (NEW).]

#### SECTION HISTORY

2009, c. 454, §1 (NEW).

## §154. CONDEMNATION PROCEEDINGS

If the department determines that public exigency requires the taking of property or any interest in property, or is unable to purchase a property or any interest in a property, or the necessary ways and access to a property at what it considers a reasonable valuation, or if the title in a property is defective, it shall file in the registry of deeds for the county or registry district where the land is located a notice of condemnation which must contain a description of the project specifying the property and the interest taken and the name or names of the owner or owners of record so far as they can be reasonably determined. The department may prescribe procedures for the reasonable determination of the owner or owners of record. The department may join in the notice one or more separate properties whether in the same or different ownership and whether or not taken for the same use. [1997, c. 272, §2 (AMD).]

The department shall serve a check in the amount of the determined net damage and offering price and a copy of the notice of condemnation on the owner or owners of record. In case there is multiple ownership, the check may be served on any one of the owners. With that copy the department must serve on each individual owner of record a copy of that part of the plan as relates to the particular parcel or parcels of land taken from that owner and a statement by the department with respect to the particular parcel or parcels of land taken from that owner which must: [1997, c. 272, §2 (AMD).]

**1. Date of proposed possession.** State the proposed date of taking possession;

[1981, c. 470, Pt. A, §125 (AMD).]

**2. Compensation involving severance damage.** Where the department appraisals disclose severance damages, state the amount of compensation itemized in accordance with the department's determination of the following elements of damage:

- A. The highest and best use of the property at the date of taking;
- B. The highest and best use of the property remaining after the taking;
- C. The fair market value of the property before the taking;
- D. The fair market value of the property after the taking;
- E. The gross damage, showing separately:

- (1) The fair market value of the real property taken; and
- (2) Severance damages including the impairment or destruction of facilities and structures; [1981, c. 470, Pt. A, §126 (AMD).]

F. Special benefits, accruing to the remaining property by reason of the public improvement for which part of the property is taken, to be set off against severance damages; [1975, c. 431, §4 (AMD).]

G. The net damage showing separately:

- (1) The fair market value of the real property taken;
- (2) The amount of severance damages in excess of special benefits; and
- (3) The offering price; [1997, c. 272, §2 (AMD).]

H. If the offer is not acceptable and the State cannot negotiate an agreement on the amount of just compensation within 60 days from the date of taking, the owner may apply to the department within said 60 days and have the matter referred to the State Claims Commission for assessment of the damage. Acceptance and cashing this check will not jeopardize negotiation and will not be construed as acceptance of the offer; and [1987, c. 395, Pt. A, §94 (AMD).]

I. Enclosed Check No.: ..... Amount: \$ .....

Payable to: .....

Sent to: .....

[ 1997, c. 272, §2 (AMD) . ]

**3. Compensation not involving severance damage.** Where the department appraisals disclose no severance damages, state the amount of compensation itemized in accordance with the department's determination of the following elements of damage:

A. The highest and best use of the property at the date of taking;

C. The fair market value of the real property taken as of the date of taking; [1975, c. 431, §7 (AMD) . ]

E. Offering price; [1975, c. 431, §9 (RPR) . ]

F. The check represents the State's offer of just compensation. If the offer is not acceptable and the State cannot negotiate an agreement on the amount of just compensation within 60 days from the date of taking, the owner may apply to the department within the 60 days and have the matter referred to the State Claims Commission for assessment of the damage. Acceptance and cashing this check will not jeopardize negotiation and will not be construed as acceptance of the offer; and [1997, c. 272, §2 (AMD) . ]

G. Enclosed Check No.: ..... Amount: \$ .....

Payable to: .....

Sent to: .....

[ 1997, c. 272, §2 (AMD) . ]

**4. Compensation in cases involving the facilities of a public utility.** Where the condemnation involves the taking of established rights and facilities owned by a public utility and located outside of an established highway right-of-way, no statement by the department as provided above may be sent to the public utility concerned. In any negotiations for an agreement with such public utility with regard to such rights and facilities, the department shall consider, without being limited to, the following elements of damage:

A. Relocation costs, which must include the cost of acquisition of substitute rights and the cost of establishing either existing or substitute facilities in a new location; [1997, c. 272, §2 (AMD).]

B. The salvage value of facilities removed;

C. Cost of removal; and [1981, c. 470, Pt. A, §129 (AMD).]

D. The value of betterments where the function of the substitute facilities exceeds the function of the replaced facilities. [1981, c. 470, Pt. A, §129 (AMD).]

[ 1997, c. 272, §2 (AMD) .]

Service of the notice of condemnation with a copy of the plan, check and the statement by the department must be made by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. A notice describing the condemnation must be published once in a newspaper of general circulation in the county where the property is located and such publication constitutes service on any unknown owner or owners or other persons who may have or claim an interest in the property. The notice must consist of an area map depicting the general location of the property interests to be condemned and such other information as the department determines will sufficiently identify the area in which the property interests are to be taken; an informative summary listing the parcel or item numbers to be condemned, the name of the apparent owner or owners of record of the property interests, the estimated areas to be condemned and the nature of the interests to be condemned; and a location at which the complete notice of layout and taking may be examined. [1997, c. 272, §2 (AMD).]

If such owner is a person under the age of 18 years, or an incompetent person, the commission shall cause such notice and check to be served upon the legal guardian of such person or incompetent. If there is no such guardian, then the department shall apply to the judge of probate for the county wherein the property is situated, briefly stating the facts and requesting the appointment of a guardian. The reasonable fee of such guardian as approved by the court must be paid by the department. [1997, c. 272, §2 (AMD).]

In case there is a mortgage, tax lien of record or other encumbrance covering any of said land, a copy of the notice of condemnation must be sent forthwith by registered or certified mail to the holder of record of said mortgage, tax lien or other encumbrance addressed to the holder's office or place of abode if known, otherwise to the office, abode or address as set forth in said record. [1997, c. 272, §2 (AMD).]

The recording of the notice of condemnation is the date of taking and vests title to the property therein described in the State in fee simple or such lesser state as is specified in the notice of condemnation. Within one year after the completion of the project for which the land is taken, the department shall file a plan for recording in the registry of deeds for the county or registry district where the land is located. [1997, c. 272, §2 (AMD).]

If a condemnation proceeding is instituted and then abandoned, the owner of any right, title or interest in any real property included in said proceeding must be reimbursed by the department for reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings. [1997, c. 272, §2 (AMD).]

#### SECTION HISTORY

1965, c. 297, §§1-4 (AMD). 1965, c. 492, §2 (AMD). 1969, c. 433, §58 (AMD). 1971, c. 333, §3 (AMD). 1971, c. 593, §22 (AMD). 1971, c. 598, §46 (AMD). 1975, c. 431, §§4-9 (AMD). 1975, c. 771, §§237,238 (AMD). 1981, c. 470, §§A124-A129 (AMD). 1987, c. 395, §§A94,A95 (AMD). 1997, c. 272, §2 (AMD). 1997, c. 272, §2 (AMD).

## §154-A. FAIR MARKET VALUE ADJUSTMENT

Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining just compensation for the property. [1971, c. 333, §4 (NEW).]

### SECTION HISTORY

1971, c. 333, §4 (NEW).

## §154-B. COERCIVE ACTION

In no event shall the department either advance the time of condemnation, or defer negotiations or condemnation or take any other action coercive in nature, in order to compel an agreement on the price to be paid for property or property rights. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1971, c. 333, §4 (NEW). 1971, c. 593, §22 (AMD).

## §154-C. UNECONOMIC REMNANTS

If the acquisition of only a portion of a property would leave the owner of record with an uneconomic remnant the department may, or at the request of the owner shall, acquire by purchase or condemnation the entire property. An uneconomic remnant is a parcel of real property in which the owner would be left with an interest which the department has determined has little or no value or utility to the owner. [1989, c. 208, §2 (RPR).]

### SECTION HISTORY

1971, c. 333, §4 (NEW). 1971, c. 593, §22 (AMD). 1989, c. 208, §2 (RPR).

## §154-D. NOTICE TO VACATE

No person lawfully occupying real property shall be required to move from a dwelling or move his business or farm operation without at least 90 days written notice from the department of the date by which such move is required. [1971, c. 593, §22 (AMD).]

Any person displaced by a taking or acquisition who remains in occupancy after the date of acquisition may be required to pay compensation from the date of the acquisition. The compensation paid by the displaced person may not exceed fair rental value of the property based on short-term occupancy. If the displaced person and the department cannot reach agreement as to equivalent of fair rental value for the initial 90-day period after acquisition, each may apply to the State Claims Commission in writing for such a determination. The State Claims Commission's jurisdiction to determine the fair rental value is limited solely to the initial 90-day period. Any compensation to be paid by the displaced person after the initial 90-day period must be determined solely by the department. [1999, c. 753, §2 (AMD).]

### SECTION HISTORY

1971, c. 333, §4 (NEW). 1971, c. 593, §22 (AMD). 1983, c. 272, (AMD). 1987, c. 395, §A96 (AMD). 1999, c. 753, §2 (AMD).

## §154-E. IMPROVEMENT

Payment to tenants of record shall be made by the department pursuant to this section for any building, structure or other improvement which is owned by the tenant. The tenant shall be paid the fair market value which the building, structure or improvement contributes to the fair market value of the real property to be

acquired, or its salvage value, whichever is greater. No payment may be made unless, prior to condemnation, the owner of the land involved disclaims in writing to the department all interest in the tenant's improvement, and the department determines that the improvement qualifies for payment. In consideration for any such payment, the tenant shall assign, transfer and release to the department all rights, title, and interest in and to the improvements. The department shall not make any payment under this section which it determines would result in duplication of any payment otherwise authorized by this Title. [1989, c. 208, §3 (RPR).]

For the purpose of determining the just compensation to be paid for any acquired building, structure or other improvement, that building, structure or other improvement shall be deemed to be part of the real property, notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove that building, structure or improvement at the expiration of the term of the lease. [1989, c. 208, §3 (RPR).]

Nothing in this section may be construed to deprive the tenant of any rights to reject payment under this section and to obtain payment for the property interests in accordance with applicable law other than this section. [1989, c. 208, §3 (NEW).]

#### SECTION HISTORY

1971, c. 333, §4 (NEW). 1989, c. 208, §3 (RPR).

### §154-F. SPECIAL BENEFITS

In determining just compensation where special benefits are found, the owner or owners of record shall be compensated at least for the fair market value of the property and any rights or interest therein taken. [1975, c. 431, §9-A (NEW).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 431, §§9-A (NEW).

### §155. NEGOTIATION

The department shall have 60 days from the date of taking within which to negotiate with the owner or owners of record for an agreement as to the amount of just compensation. If within that time the owner rejects the State's offer of just compensation, such owner may apply to the department and have the matter referred to the State Claims Commission for assessment of the damage. If, at the expiration of that time, no such agreement for just compensation has been made, the department shall immediately file a petition with the State Claims Commission setting forth the pertinent facts including the names and addresses of the owner or owners of record and the holders of any mortgages, tax liens or other encumbrances, a copy of the notice of condemnation, the statement of the department and a plan of the property involved as served upon the owner or owners of record in accordance with section 154 and requesting a hearing and an award of just compensation. [1987, c. 395, Pt. A, §97 (AMD).]

#### SECTION HISTORY

1965, c. 297, §5 (AMD). 1975, c. 771, §239 (AMD). 1987, c. 395, §A97 (AMD).

### §156. HEARING BEFORE BOARD

The State Claims Commission shall immediately enter the petition of the department upon its docket and assign a date for hearing at the earliest possible date. The chairman of the board shall assign no more than 3 members of the board for hearings, one of whom shall be an appraiser and one an attorney at law. Notice of the time and place for the hearing shall be mailed by registered or certified mail to the department and to the owner or owners of record and to the holders of any mortgage, tax lien or any other encumbrance on the property involved at least 14 days before the date of the hearing. In the event the notice required is returned to the State Claims Commission marked "refused" or "unclaimed" by the United States post office, the State Claims Commission may, at its option, reschedule the hearing by giving the notice required in this paragraph,



or it may cause the matter to be heard on the day originally scheduled by causing service to be made upon the party not served by certified or registered mail in a manner allowed for service of a summons on a complaint in the Superior Court, which notice shall be served at least 5 days before the originally scheduled hearing. The hearing shall be held in quarters suitable for a full presentation of all evidence and located as conveniently as possible for all interested parties in the county where the land is situated. Before making an award, the State Claims Commission shall view the property involved with or without the presence of the interested parties, but it shall first notify the interested parties of the time when it will view the property. The department shall be represented at the hearing and may present in open hearing evidence as to title, engineering maps and data, and its opinion, evidence and appraisal or appraisals as to the fair market value of the property involved before and after the taking. In all matters where a verbatim record of the proceedings is made by an official board reporter, a transcript of the same shall be furnished to the interested parties, upon request, and upon payment of a reasonable charge for transcribing and preparing such record. In making its award, the State Claims Commission shall not be limited by the range of testimony produced before it but may reach its decision on the basis of the view, the testimony and its own judgment. The State Claims Commission may continue a hearing from time to time for cause shown or by agreement of parties; and where such continuance is made at the request of the landowner, may require that interest be waived for the period of the continuance. [1987, c. 395, Pt. A, §98 (AMD).]

As promptly as possible after the conclusion of the hearing, the State Claims Commission shall make an award in writing specifying: [1987, c. 395, Pt. A, §98 (AMD).]

**1. Owners and encumbrances.** The owner or owners of record and the holder of any mortgage, tax lien or other encumbrance of record;

[ 1965, c. 297, §6 (AMD) .]

**2. Nature of interest taken.** The nature of the interest taken;

**3. Commission's decision on elements of damage.** The State Claims Commission's decision as to each of the elements of damage listed in section 154, subsection 2 or 3, or the elements of damage as set forth in section 154, subsection 4, and such other elements of damage as are legally compensable;

[ 1987, c. 395, Pt. A, §98 (AMD) .]

**4. Gross damage.** The gross damage which shall be the net damage not including interest;

[ 1965, c. 297, §7 (RPR) .]

**5. Net amount of award.** The net amount of the award which shall be the net damage less the amount paid the owner or owners at the date of taking;

[ 1965, c. 297, §8 (NEW) .]

**6. Interest on award.** The interest, if any, due on the net amount of the award from the date of taking to the date of the award;

[ 1965, c. 297, §8 (NEW) .]

**7. Award.** The award which shall be the net damage, less the amount paid the owner or owners at the date of taking plus interest on the net amount of the award; and

[ 1981, c. 470, Pt. A, §130 (AMD) .]

**8. Withholding.** The withholding, if any, authorized pursuant to section 244-A, subsection 4.

[ 1973, c. 22, §1 (NEW) .]

No interest may be allowed on so much of the net damage that has been paid to the owner or owners. [1991, c. 684, §2 (RPR).]

An attested copy of each award must be sent immediately to the Department of Transportation and to the party or parties named in the award. The State Claims Commission shall state by letter sent to all parties the date it issues its decision of the award. If no appeal is taken within 30 days of the date of issuance of the commission award pursuant to section 157, the Department of Transportation shall, within 60 days from the date of issuance of the commission award, pay the awarded amount to the party or parties named in the award. [2009, c. 265, §3 (AFF); 2009, c. 265, §1 (RPR).]

Service as required by this section must be made in the manner prescribed by Rule 5 of the Maine Rules of Civil Procedure. [1991, c. 684, §3 (RPR).]

Upon certification by the Department of Transportation that after due diligence the address of owners of record can not be determined or when the State Claims Commission notice by mail is returned to the commission unclaimed or unknown or where personal service can not be made, the chair of the commission may order service by publication. Notice of the time and place of the review and hearing must be published once in a newspaper of general circulation in the county in which the subject property is located. The commission shall then proceed with the hearing as in other cases and the appeal provisions must be available to the Department of Transportation and the record owner or owners, or any one of them, who appears and makes application for appeal pursuant to section 157. [1991, c. 684, §4 (AMD).]

The chair of the State Claims Commission may appoint a guardian ad litem to protect the interest and rights of any minor or incompetent persons notified under this section and determine and set reasonable compensation for that guardian ad litem. This compensation must be paid by the Department of Transportation. [1991, c. 684, §5 (NEW).]

After the appeal period from the decree of the State Claims Commission or a judgment of any court has expired, any sum of money directed by a decree of the commission or by a judgment of any court to be paid over that remains unclaimed for 60 days must be disposed of consistent with Title 33, chapter 41. [1997, c. 508, Pt. A, §3 (AFF); 1997, c. 508, Pt. B, §5 (AMD).]

Notwithstanding Title 1, section 302, this section applies to all actions and proceedings pending on September 14, 1979. [1991, c. 684, §7 (AMD).]

#### SECTION HISTORY

1965, c. 297, §§6-9 (AMD). 1965, c. 473, §§2,3 (AMD). 1971, c. 593, §22 (AMD). 1973, c. 22, §1 (AMD). 1973, c. 686, §2 (AMD). 1975, c. 771, §§240-245 (AMD). 1977, c. 78, §157 (AMD). 1979, c. 487, §§2-5 (AMD). 1981, c. 470, §A130 (AMD). 1987, c. 395, §A98 (AMD). 1991, c. 684, §§2-7 (AMD). 1997, c. 508, §B5 (AMD). 1997, c. 508, §A3 (AFF). 2009, c. 265, §1 (AMD). 2009, c. 265, §3 (AFF).

## §157. APPEALS

The Department of Transportation or any party or parties aggrieved by an award by the State Claims Commission may appeal to the Superior Court in the county where the land is situated within 30 days from the date of issuance of the commission award. This appeal is de novo and is taken by filing a complaint setting forth substantially the facts upon which the case will be tried like other civil cases. The party appealing must provide a copy of the complaint to be filed in the Superior Court to the other party or parties within the same 30 days. [2009, c. 265, §2 (AMD); 2009, c. 265, §3 (AFF).]

The court shall determine the same by a verdict of its jury or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for just compensation, with interest where such is due, and for costs in favor of the party entitled thereto; except that if the department appeals and if the department does not prevail, interest where such is due and costs shall be paid by the department and the owner or owners shall be reimbursed by the department for a reasonable attorney's fee. [1971, c. 593, §22 (AMD).]

If either the owner or owners of record or the department appeal and the just compensation finally awarded, exclusive of interest, is less than the gross damage determined by the State Claims Commission, exclusive of any interest allowed, then the court shall give judgment in favor of the department for the excess of the gross damage determined by the State Claims Commission, inclusive of interest, over the final award and for its costs from the time of appeal. Execution may be issued on such judgment. [1987, c. 395, Pt. A, §99 (AMD).]

If either the owner or owners of record or the department appeal and the just compensation finally awarded, exclusive of interest, is not less than the gross damage determined by the State Claims Commission, exclusive of any interest allowed, then the court shall give judgment to the owner or owners for the amount in which the final award is in excess of the amount paid the owner or owners and for interest on such excess from the date of taking and for costs from the time of appeal. The clerk shall certify the final judgment of the court to the department, which shall enter the same of record and order the same to be paid by the Treasurer of State. The judgment and certificate of judgment shall specify the withholding, if any, authorized pursuant to section 244-A, subsection 4. [1991, c. 684, §9 (AMD).]

In case of the decease of any person entitled to claim damages under this subchapter, the heirs, executors, administrators or assigns of such person shall have the right to prosecute the appeal provided for in this section under the same conditions and limitations as the original owner had, and may be substituted for the appellant in any proceedings commenced by said appellant. In case any landowner assigns, transfers or sells his right to claim damages, his assignee, transferee or vendee shall have the same rights as above set forth.

#### SECTION HISTORY

1965, c. 297, §10 (AMD). 1967, c. 436, (AMD). 1971, c. 593, §22 (AMD). 1973, c. 22, §2 (AMD). 1975, c. 771, §246 (AMD). 1987, c. 395, §A99 (AMD). 1991, c. 684, §§8,9 (AMD). 2009, c. 265, §2 (AMD). 2009, c. 265, §3 (AFF).

### **§158. WITHDRAWAL OF MONEY DEPOSITED**

***(REPEALED)***

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 771, §247 (AMD). 1981, c. 470, §A131 (AMD). 1983, c. 266, (RPR). 1987, c. 395, §A100 (AMD). 1991, c. 684, §10 (RP).

### **§159. INTERPLEADER**

If difficult questions of law should arise before the State Claims Commission as to entitlement to or apportionment of just compensation, then it is authorized to make a blanket award to all parties interested. If no appeal is taken and no agreement is reached by the parties named in the award within 60 days from the date of such award, the State Claims Commission shall certify the facts and legal questions to the department. The department shall then interplead the parties named in the award by a complaint filed in the Superior Court in the county wherein the land is situated and shall pay in the amount of the award to the clerk of courts of the county to be paid in accordance with the court's order. For purposes of this section, the department shall be acting to prevent double or multiple liability. [1989, c. 502, Pt. A, §88 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 771, §248 (AMD). 1987, c. 395, §A101 (AMD). 1989, c. 502, §A88 (AMD).

## §160. PROPERTY MANAGEMENT

Any property taken or acquired for highway purposes may be leased, let or rented by the department to a displaced person pending advantageous use for highway purposes. The department may renovate and maintain property pending such advantageous use. The proceeds from leasing, letting or renting such property shall be credited to the fund from which payment was made for the acquisition. The consideration paid by the tenant for occupancy shall not exceed the fair rental value of the property based on short-term occupation. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1971, c. 333, §5 (NEW). 1971, c. 593, §22 (AMD).

## §161. INCIDENTAL EXPENSE PAYMENTS

**1. Reimbursement.** The department, as soon as practicable after the date of payment of just compensation, shall reimburse the owner from whom land or rights in land were acquired for highway purposes, to the extent the department deems fair and reasonable, for expenses such owner necessarily incurred for:

- A. Recording fees, transfer taxes and similar expenses, if any, incidental to conveying such property to the State; [1971, c. 333, §5 (NEW).]
- B. Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and [1971, c. 333, §5 (NEW).]
- C. The pro rata portion of real property taxes paid which are allowable to a period subsequent to the date of vesting title in the State, or the effective date of possession of such real property by the State, whichever is earlier. [1971, c. 333, §5 (NEW).]

[ 1971, c. 593, §22 (AMD) .]

**2. Determination.** Any determination by the department in the administration of this section shall be final and nothing herein shall be construed to give any person a cause of action in the State Claims Commission or the Superior Court.

[ 1987, c. 395, Pt. A, §102 (AMD) .]

### SECTION HISTORY

1971, c. 333, §5 (NEW). 1971, c. 593, §22 (AMD). 1981, c. 470, §A132 (AMD). 1987, c. 395, §A102 (AMD).

## Subchapter 4: CHIEF ENGINEER

### §201. APPOINTMENT

The commissioner shall, subject to the Civil Service Law, appoint a civil engineer as chief engineer. [1985, c. 785, Pt. B, §103 (AMD).]

### SECTION HISTORY

1971, c. 593, §6 (RPR). 1981, c. 45, §1 (AMD). 1985, c. 785, §B103 (AMD).

## Subchapter 5: RELOCATION ASSISTANCE

### §211. PURPOSE

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§212. DEFINITIONS**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§213. RELOCATION ADVISORY ASSISTANCE**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§214. RELOCATION PAYMENTS**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§215. REPLACEMENT HOUSING ALLOWANCE**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§216. TRANSFER EXPENSE ALLOWANCE**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§217. ADMINISTRATION**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§218. HARDSHIP**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§219. RULES AND REGULATIONS**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

## **§220. APPEAL**

*(REPEALED)*

### SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

## **§221. LIMITATION**

*(REPEALED)*

### SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

## **§222. PROPERTY MANAGEMENT**

*(REPEALED)*

### SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

## Subchapter 6: SCENIC HIGHWAY BOARD

## **§231. INTENT**

*(REPEALED)*

### SECTION HISTORY

1969, c. 453, §1 (NEW). 1971, c. 593, §7 (RP).

## **§232. PURPOSE**

*(REPEALED)*

### SECTION HISTORY

1969, c. 453, §1 (NEW). 1971, c. 593, §7 (RP).

## **§233. SCENIC HIGHWAY BOARD**

*(REPEALED)*

### SECTION HISTORY

1969, c. 453, §1 (NEW). 1971, c. 593, §7 (RP).

## **§234. DUTIES**

*(REPEALED)*

### SECTION HISTORY

1969, c. 453, §1 (NEW). 1971, c. 593, §7 (RP).

## **§235. RESPONSIBILITIES OF STATE HIGHWAY COMMISSION**

*(REPEALED)*

### SECTION HISTORY

1969, c. 453, §1 (NEW). 1971, c. 593, §7 (RP).

## Subchapter 7: RELOCATION ASSISTANCE

### §241. PURPOSE

The prompt and equitable relocation and reestablishment of persons, businesses, farm operations and nonprofit organizations displaced as a result of state or state aid highway projects are necessary to insure that a few individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Relocation payments and advisory assistance are to be made available to all persons so displaced in accordance with this subchapter. [1981, c. 470, Pt. A, §133 (AMD).]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1981, c. 470, §133 (AMD).

### §242. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings. [1979, c. 541, Pt. A, §158 (AMD).]

#### 1. Average annual net earnings.

[ 1989, c. 208, §§4, 21 (RP) .]

#### 2. Business. "Business" shall mean any lawful activity, excepting a farm operation conducted primarily:

- A. For the purchase, sale, lease and rental of personal and real property and for the manufacture, processing or marketing of products, commodities or any other personal property; [1971, c. 333, §1 (NEW).]
- B. For the sale of services to the public; or [1971, c. 333, §1 (NEW).]
- C. By a nonprofit organization; or [1971, c. 333, §1 (NEW).]
- D. Solely for the purposes of section 244, for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted. [1971, c. 333, §1 (NEW).]

[ 1971, c. 333, §1 (NEW) .]

**2-A. Comparable replacement dwelling.** "Comparable replacement dwelling" means any dwelling that is:

- A. Decent, safe and sanitary; [1989, c. 208, §§5, 21 (NEW).]
- B. Adequate in size to accommodate the occupants; [1989, c. 208, §§5, 21 (NEW).]
- C. Within the financial means of the displaced person; [1989, c. 208, §§5, 21 (NEW).]
- D. Functionally equivalent to the displacement dwelling; [1989, c. 208, §§5, 21 (NEW).]
- E. In an area not subject to unreasonably adverse environmental conditions; and [1989, c. 208, §§5, 21 (NEW).]
- F. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment. [1989, c. 208, §§5, 21 (NEW).]

[ 1989, c. 208, §§5, 21 (NEW) .]

**2-B. Department.** "Department" means the Department of Transportation.

[ 1989, c. 208, §§5, 21 (NEW) .]

**3. Displaced person.** "Displaced person" is defined as follows.

A. "Displaced person" means:

(1) Any person who moves from real property or moves that person's personal property from real property:

(a) As a direct result of a written notice of intent to acquire or the acquisition of that real property in whole or in part for a program or project undertaken by the department; or

(b) On which the person is a residential tenant or conducts a small business, a farm operation or a business defined in subsection 2, as a direct result of rehabilitation, demolition or such other displacing activity as the department prescribes under a program or project undertaken by the department in any case in which the department determines that the displacement is permanent; and

(2) Solely for the purposes of section 243 and section 244, subsections 1 and 2, any person who moves from real property or moves that person's personal property from real property:

(a) As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by the department; or

(b) As a direct result of rehabilitation, demolition or such other displacing activity as the department prescribes of other real property on which the person conducts a business or a farm operation, under a program or project undertaken by the department where the department determines that the displacement is permanent. [1989, c. 208, §§6, 21 (NEW) .]

B. "Displaced person" does not include:

(1) A person who has been determined, according to criteria established by the department, either to be unlawfully occupying the displacement dwelling or to have occupied the dwelling for the purpose of obtaining assistance under this subchapter; and

(2) In any case in which the department acquires property for a program or project, any person, other than a person who was an occupant of the property at the time it was acquired, who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project. [1989, c. 208, §§6, 21 (NEW) .]

[ 1989, c. 208, §§6, 21 (RPR) .]

**4. Existing patronage.** "Existing patronage" means either the volume of clientele or the annual net earnings for the 2 taxable years immediately prior to the taxable year in which the business was displaced.

[ 1989, c. 208, §§7, 21 (RPR) .]

**5. Farm operation.** "Farm operation" shall mean any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

[ 1971, c. 333, §1 (NEW) .]



**6. Federal agency.** "Federal agency" shall mean any department, agency or instrumentality in the executive branch of the Federal Government, except the National Capitol Housing Authority, any wholly-owned government corporation, except the District of Columbia Redevelopment Land Agency, and the Architect of the Capitol, the Federal Reserve Banks and branches thereof.

[ 1971, c. 333, §1 (NEW) .]

**7. Mortgage.** "Mortgage" shall mean such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of this State, together with the credit instruments, if any, secured thereby.

[ 1971, c. 333, §1 (NEW) .]

**8. Person.** "Person" shall mean any individual, partnership, corporation or association.

[ 1971, c. 333, §1 (NEW) .]

**9. Program or project.** "Program or project" means any highway construction or related activity undertaken by the Department of Transportation on a state or state-aid highway and any other activity undertaken and authorized by law to be carried out by the department.

[ 1989, c. 208, §§8, 21 (AMD) .]

**9-A. Small business.** "Small business" means any business having fewer than 500 employees working at the site being acquired or permanently displaced by a program or project.

[ 1989, c. 208, §§9, 21 (NEW); 1989, c. 866, Pt. B, §1 (AMD); 1989, c. 866, Pt. B, §26 (AFF) .]

**10. State agency.** "State agency" means any department, agency or instrumentality of this State or any political subdivision of this State, any department, agency or instrumentality of 2 or more states, or 2 more political subdivisions of the State or states and any person who has the authority to acquire property by eminent domain under state law.

[ 1989, c. 208, §§10, 21 (AMD) .]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD). 1973, c. 625, §129 (AMD). 1979, c. 541, §A158 (AMD). 1989, c. 208, §§4-10, 21 (AMD). 1989, c. 866, §§B1, 26 (AMD).

## §243. RELOCATION ASSISTANCE ADVISORY SERVICES

**1. Relocation assistance advisory program.** Whenever the acquisition of real property for a department program or project will result in the displacement of any person, the department shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection 2. If the department determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, the department may offer the person relocation advisory services under the program.

[ 1989, c. 208, §§11, 21 (AMD) .]

**2. Program to include.** Each relocation assistance advisory program required by subsection 1 shall include such measures, facilities or services as may be necessary or appropriate in order to:

A. Determine and make timely recommendations on the needs and preferences, if any, of displaced persons, for relocation assistance; [1989, c. 208, §§11, 21 (AMD).]

B. Provide current and continuing information on the availability, sales prices and rental charges of comparable replacement dwellings for displaced homeowners and tenants, and of comparable commercial properties and on suitable locations for displaced businesses and farm operations; [1989, c. 208, §§11, 21 (AMD).]

C. Assure that, within a reasonable period of time, prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe and sanitary dwellings, equal in number to the number of and available to the displaced persons who require these dwellings and reasonably accessible to their places of employment; [1989, c. 208, §§11, 21 (AMD).]

D. Assist a person displaced from that person's business or farm operation in obtaining and becoming established in a suitable replacement location; [1989, c. 208, §§11, 21 (AMD).]

E. Supply information concerning federal, state and local programs, which may be of assistance to displaced persons, and supply technical assistance to persons in applying for assistance under these programs; and [1989, c. 208, §§11, 21 (AMD).]

F. Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation. [1971, c. 333, §1 (NEW).]

[ 1989, c. 208, §§11, 21 (AMD) .]

**3. Coordination.** The department shall coordinate relocation activities with project work, and other planned or proposed federal, state or local agency actions in the community or nearby areas which may affect the efficient and effective carrying out of relocation assistance programs.

[ 1989, c. 208, §§11, 21 (AMD) .]

**4. Renter eligibility.** Notwithstanding section 242, subsection 3, paragraph B, subparagraph(2), in any case in which the department acquires property for a program or project, any person who occupies that property on a rental basis for a short term or for a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the department.

[ 1989, c. 208, §§11, 21 (NEW) .]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD). 1973, c. 625, §130 (AMD). 1989, c. 208, §§11,21 (AMD).

## §244. MOVING AND RELATED EXPENSES

**1. Payments.** Whenever a program or project to be undertaken by the department will result in the displacement of any person, the department shall make a payment to any displaced person, upon proper application on forms approved by the department, for:

A. Actual reasonable expenses in moving that person, that person's family, business, farm operation or other personal property; [1989, c. 208, §§12, 21 (AMD).]

B. Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the department; [1989, c. 208, §§12, 21 (AMD) .]

C. Actual reasonable expenses, but not to exceed \$2,500, in searching for a replacement business or farm; and [2005, c. 642, §1 (AMD).]

D. Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization or small business at its new site, in accordance with criteria to be established by the department, but not to exceed \$20,000. [2005, c. 642, §2 (AMD).]

[2005, c. 642, §§1, 2 (AMD).]

**2. Fixed payments for residential displacements.** Any displaced person eligible for payments under subsection 1 who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection 1 may receive a moving expense and dislocation allowance, which shall be determined according to a schedule established by the department.

[1989, c. 208, §§12, 21 (AMD).]

**3. Fixed payments for business or farm displacements.** Any displaced person eligible for payments under subsection 1 who is displaced from that person's place of business or farm operation and who is eligible under criteria established by the department may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection 1. The payment consists of a fixed payment in an amount to be determined according to criteria established by the department, except that any such payment may not be less than \$1,000 nor more than \$100,000. A person whose sole business at the displacement dwelling is the rental of property to others does not qualify for a payment under this subsection. In the case of a business no payment may be made under this subsection unless the department is satisfied that the business:

A. Cannot be relocated without a substantial loss of its existing patronage; and [1989, c. 208, §§12, 21 (AMD).]

B. Is not part of a commercial enterprise having more than 3 other establishments not being acquired by the department that are engaged in the same or similar business. [2005, c. 642, §3 (AMD).]

[2005, c. 642, §3 (AMD).]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD). 1973, c. 625, §131 (AMD). 1989, c. 208, §§12, 21 (AMD). 2005, c. 642, §§1-3 (AMD).

## **§244-A. REPLACEMENT HOUSING FOR HOME OWNER**

**1. Owner.** In addition to payments otherwise authorized, the department shall make an additional payment not in excess of \$22,500 to any displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. The additional payment shall include the following elements:

A. The amount, if any, which when added to the acquisition cost of the dwelling acquired by the department equals the reasonable cost of a comparable replacement dwelling. All determinations required to carry out this paragraph shall be made in accordance with standards established by the department; [1989, c. 208, §§13, 21 (AMD).]

B. The amount, if any, which will compensate the displaced person for any increased interest costs and other debt service costs which that person is required to pay for financing the acquisition of any such comparable replacement dwelling. The amount shall be paid only if the dwelling acquired by the department was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of that dwelling. In calculating the amount to be paid under this section, increased interest costs and other debt service costs shall be reduced to discounted present value. The payment shall be an amount which will reduce the mortgage

balance on the replacement dwelling to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage on the displaced dwelling; and [1989, c. 208, §§13, 21 (AMD).]

C. Reasonable expenses incurred by the displaced person for evidence of title, recording fees and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses. [1989, c. 208, §§13, 21 (AMD).]

[ 1989, c. 208, §§13, 21 (AMD) .]

**2. Replacement dwelling.** The additional payment authorized by subsection 1 shall be made only to a displaced person who purchases and occupies a replacement dwelling which is decent, safe and sanitary not later than the end of the one-year period beginning on the date on which the displaced person receives from the department final payment of all costs of the acquired dwelling, or the date on which the department meets its obligation under section 244-C, whichever is later, except that the department may extend the period for good cause. If the period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within one year of the date otherwise designated in this subsection.

[ 1989, c. 208, §§14, 21 (AMD) .]

**3. Mortgage insurance.** The department is authorized to negotiate with any federal agency for any mortgage insurance protection available to a displaced person to insure any mortgage on a comparable replacement dwelling executed by a displaced person assisted under this section.

[ 1971, c. 593, §22 (AMD) .]

**4. Advance payments.** The additional payment authorized by subsection 1 may be made to the displaced person while determination of the acquisition cost of the dwelling is either unsettled or is pending before the State Claims Commission or the Superior Court. Such a payment is not authorized until and unless an agreement between the Department of Transportation and the displaced person is signed which shall authorize withholding from any subsequent award by the State Claims Commission or judgment of the court any amount determined from the agreement to be refunded by the displacee to the department by reason of the award or judgment being in excess of the determined net damage and offering price paid pursuant to section 154. A copy of the agreement shall be filed with the State Claims Commission with the petition or within 10 days after it is signed if the petition is already filed and a copy shall be filed in any subsequent case appealed to the Superior Court with the complaint or answer, or both. The State Claims Commission and court shall take judicial notice of the facts set forth in such agreement.

[ 1987, c. 395, Pt. A, §103 (AMD) .]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD). 1973, c. 22, §3 (AMD). 1981, c. 470, §§A134,A135 (AMD). 1987, c. 395, §A103 (AMD). 1989, c. 208, §§13,14,21 (AMD).

## §244-B. REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

In addition to amounts otherwise authorized by this subchapter, the department shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 244-A which dwelling was actually and lawfully occupied by the displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of the dwelling or in any case in which displacement is not a direct result of the acquisition of the dwelling or in such other event as the department prescribes. Payment shall be either: [1989, c. 208, §§15, 21 (AMD).]

**1. Lease or rent.** The amount necessary to enable the displaced person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed \$5,250. At the discretion of the department, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account the person's income; or

[ 1989, c. 208, §§15, 21 (AMD) . ]

**2. Purchase.** An amount to be used towards the purchase of a dwelling as follows. Any person eligible for a payment under subsection 1 may elect to apply the payment to a down payment, including incidental expenses described in section 244-A, subsection 1, paragraph C, on the purchase of a decent, safe and sanitary replacement dwelling. The person may, at the discretion of the department, be eligible under this subsection for the maximum payment allowed under subsection 1, except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of the dwelling, the payment shall not exceed the payment the person would otherwise have received under section 244-A, subsection 1, paragraph A had the person owned and occupied the displacement dwelling 180 days or more immediately prior to the initiation of negotiations.

[ 1989, c. 208, §§15, 21 (AMD) . ]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD). 1989, c. 208, §§15, 21 (AMD) .

## §244-C. ASSURANCE OF AVAILABILITY OF HOUSING

**1. Expenditures for replacement dwellings.** If a program or project undertaken by the department cannot proceed on a timely basis because comparable replacement dwellings are not available, and the department determines that those dwellings cannot otherwise be made available, the department may take such action as is necessary or appropriate to provide dwellings by use of funds authorized for the project. The department may use this section to exceed the maximum amounts which may be paid under sections 244-A and 244-B on a case-by-case basis for good cause as determined in accordance with guidelines that the department issues.

[ 1989, c. 208, §§16, 21 (NEW) . ]

**2. Availability required.** No person may be required to move from a dwelling because of any program or project undertaken by the department unless the department is satisfied that comparable replacement housing is available to that person.

[ 1989, c. 208, §§16, 21 (NEW) . ]

**3. Exceptions.** The department shall assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of:

A. A major disaster as defined in the United States Disaster Relief Act of 1974, Section 102(2);  
[ 1989, c. 208, §§16, 21 (NEW) . ]

B. A national emergency declared by the President of the United States; or [ 1989, c. 208, §§16, 21 (NEW) . ]

C. Any other emergency which requires the person to move immediately from the dwelling because continued occupancy of that dwelling by that person constitutes a substantial danger to the health or safety of that person. [1989, c. 208, §§16, 21 (NEW).]

[ 1989, c. 208, §§16, 21 (NEW) .]

#### SECTION HISTORY

1989, c. 208, §§16,21 (NEW).

### §245. ADMINISTRATION

The department shall carry out the functions of this subchapter either with its personnel or through any federal, state or municipal agency having an established organization for conducting relocation assistance programs; and is authorized and empowered to make all contracts and do all things necessary to fulfill the intent and purposes of this subchapter. [1989, c. 208, §§17, 21 (AMD).]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD). 1989, c. 208, §§17,21 (AMD).

#### §245-A. HARDSHIP

If the department deems a hardship case exists, it may make any payment authorized by this subchapter in whole or in part to the displaced person affected in advance of moving, conveying or other acquisition of title or possession by the State. [1971, c. 593, §22 (AMD).]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD).

#### §245-B. GUIDELINES AND RULES

The department may adopt guidelines and procedures, or promulgate rules consistent with this subchapter as it determines necessary or appropriate to carry out this subchapter and to include the standards of "decent, safe and sanitary." [1989, c. 208, §§18, 21 (AMD).]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD). 1989, c. 208, §§18,21 (AMD).

### §246. APPEAL

**1. State Claims Commission.** If the department is unable to negotiate any payment authorized under section 244, subsection 1, paragraph A, or section 244-A, subsection 1, at what it deems to be a reasonable amount, either the department or the displaced person, or both, may apply to the State Claims Commission in writing for a determination and assessment. The proceedings shall then be the same as in condemnation proceedings under subchapter III.

[ 1987, c. 395, Pt. A, §104 (AMD) .]

**2. Commissioner of Transportation.** Any person aggrieved by a determination as to eligibility for any payment, except those enumerated in subsection 1, authorized by this subchapter may have that person's application reviewed by the commissioner or the commissioner's delegate whose determination shall be final and nothing in this section may be construed to give any person a cause of action in the State Claims Commission or the Superior Court.

[ 1989, c. 208, §§19, 21 (AMD) . ]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §§22,24 (AMD). 1981, c. 470, §A136 (AMD). 1987, c. 395, §A104 (AMD). 1989, c. 208, §§19,21 (AMD).

## §247. LIMITATION

Nothing contained in this subchapter shall be construed as creating in any eminent domain proceeding an element of damages not in existence on the date of enactment hereof. [1971, c. 333, §1 (NEW).]

Any payments authorized under this subchapter and received by a displaced person shall not be considered income for purposes under the Internal Revenue Code, or resources of any recipient of public assistance. [1971, c. 333, §1 (NEW).]

#### SECTION HISTORY

1971, c. 333, §1 (NEW).

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